

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #04	CCRB Case #: 202201246	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/16/2022 6:00 AM, Wednesday, 02/16/2022 6:00 AM	Location of Incident: § 87(2)(b) § 87(2)(b) in Yonkers, NY	18 Mo. SOL 8/16/2023	Precinct: 41		
Date/Time CV Reported Mon, 02/28/2022 2:42 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 02/28/2022 2:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT David Pabon	00128	939158	NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Jose Reyna	07384	942422	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A . SGT David Pabon	Abuse: Sergeant David Pabon entered § 87(2)(b) in the Bronx.	§ 87(2)(g), § 87(4-b)
B . SGT David Pabon	Abuse: Sergeant David Pabon searched § 87(2)(b) in the Bronx.	§ 87(2)(g), § 87(4-b)
C . SGT David Pabon	Abuse: Sergeant David Pabon failed to provide § 87(2)(b) with a business card.	§ 87(2)(g), § 87(4-b)
D . SGT David Pabon	Abuse: Sergeant David Pabon entered § 87(2)(b) in Yonkers, NY.	§ 87(2)(g), § 87(4-b)
E . SGT David Pabon	Abuse: Sergeant David Pabon searched § 87(2)(b) in Yonkers, NY.	§ 87(2)(g), § 87(4-b)
F . SGT David Pabon	Abuse: Sergeant David Pabon failed to provide § 87(2)(b) with a business card.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)

Case Summary

On February 28, 2022, § 87(2)(b) filed this complaint with the CCRB Call Processing System.

On February 16, 2022, at approximately 6:00 a.m., Sergeant David Pabon entered and searched § 87(2)(b) house on § 87(2)(b) in the Bronx along with additional officers from Bronx Narcotics (**Allegations A-B: Abuse of Authority, § 87(2)(g)**). Sgt. Pabon failed to provide § 87(2)(b) tenant, § 87(2)(b) with a business card (**Allegation C: Abuse of Authority, § 87(2)(g)**). Afterwards, Sgt. Pabon and the officers entered and searched § 87(2)(b) home at § 87(2)(b) in Yonkers (**Allegations D-E: Abuse of Authority, § 87(2)(g)**). Sgt. Pabon failed to provide § 87(2)(b) with a business card (**Allegation F: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

No arrests or summonses resulted from this incident.

The investigation did not obtain any body-worn camera videos given that Bronx Narcotics officers are not equipped with them. § 87(2)(b) provided security camera footage of the officers entering § 87(2)(b) (Board Review 09).

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant David Pabon entered § 87(2)(b) in the Bronx.

Allegation (B) Abuse of Authority: Sergeant David Pabon searched § 87(2)(b) in the Bronx.

Allegation (C) Abuse of Authority: Sergeant David Pabon failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that she received message from her tenant, § 87(2)(b) who lived in the § 87(2)(b) unit of her two-family home at § 87(2)(b) stating that officers came to the home (Board Review 01). § 87(2)(b) told § 87(2)(b) that officers visited and asked about an individual named § 87(2)(b). § 87(2)(b) told the officers that she was the only one who lived there. Officers asked about the § 87(2)(b) apartment but did not go inside.

The investigation was unable to obtain a statement from § 87(2)(b).

Sgt. Pabon testified that he was responsible for supervising a team of five or six Bronx Narcotics officers to apprehend § 87(2)(b) in accordance with a federal arrest warrant (Board Review 02). Sgt. Pabon was not involved in the investigation into § 87(2)(b). The investigator was Bronx Narcotics Detective Joseph Ierna, who provided Sgt. Pabon with the arrest warrant and two of § 87(2)(b) known addresses. One of the addresses was § 87(2)(b). Sgt. Pabon could not recall the second address, but he knew it was not § 87(2)(b) in Yonkers. Sgt. Pabon did not have a search warrant for any of the addresses. Det. Ierna was not part of Sgt. Pabon's team and was not a witness on this date.

Sgt. Pabon and his team of officers, including Detective Jose Reyna, visited the first address at § 87(2)(b) in the Bronx. § 87(2)(b) answered the door, and Sgt. Pabon told her they had an arrest warrant for § 87(2)(b). § 87(2)(b) told Sgt. Pabon that § 87(2)(b) might be § 87(2)(b) son, and that § 87(2)(b) lived at § 87(2)(b) in Yonkers. Sgt. Pabon

asked § 87(2)(b) “May I come inside to ensure no one is inside?” § 87(2)(b) agreed to let them inside, though Sgt. Pabon did not recall her exact words. Sgt. Pabon did not document § 87(2)(b) consent or tell her that she could refuse consent. Generally, officers prepare a “consent to search” form when consent to a search is given, but Sgt. Pabon did not have the forms with him at the time. Sgt. Pabon and the officers went inside, following § 87(2)(b) around the apartment. There were no other civilians inside. Sgt. Pabon and the officers left the location after a few minutes. At some point, Sgt. Pabon offered a business card to § 87(2)(b) but she refused it.

Det. Reyna’s testimony was generally consistent with Sgt. Pabon’s statement (Board Review 03). He did not recall, however, if Sgt. Pabon asked for consent to enter the apartment or if § 87(2)(b) provided consent. Det. Reyna stayed outside while Sgt. Pabon entered the home. He did not see where Sgt. Pabon searched. None of the officers provided business cards to § 87(2)(b). Det. Reyna stated that it is generally the responsibility of the case officer to provide a business card to the civilian.

The investigation obtained the arrest warrant for § 87(2)(b) from the United States District Court for the Southern District of New York § 87(2)(b) (Board Review 04). It did not list any addresses associated with § 87(2)(b).

The DD5s provided in connection with this case did not list the addresses § 87(2)(b) or § 87(2)(b) in connection with § 87(2)(b) (Board Review 04). However, the DD5s were dated after this incident occurred, and thus do not provide evidence for Sgt. Pabon’s basis of knowledge at the time of incident.

New York Criminal Procedure Law §120.80 states that an officer may enter any premises in which they reasonably believe the defendant to be present (Board Review 05). In order to arrest the subject of an arrest warrant inside a third-party residence, an officer must obtain a search warrant authorizing such entry into the premises.

People v. Gonzalez, 39 N.Y.2d 122, found that officers may enter and search a premises if voluntary and unconstrained consent has been given for the officers to enter and search (Board Review 06). The court posited that, when determining the voluntariness of consent, one should consider whether the officers informed the individual of their right to refuse consent.

When an officer is seeking consent to search a person or their home, New York City Administrative Code §14-173 requires that the officer do so by:

- (a)(1) “Articulating, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to such search, and explaining that such search will not be conducted if such person refuses to provide consent to such search;”
- (a)(3) “Affirming that such person understands the information communicated pursuant to paragraph 1;” and
- (a)(4) “Refraining from conducting such search where such consent has not been obtained” (Board Review 07).

According to New York City Administrative Code §14-174, officers are required to offer a business card to the person who is the subject of a search of person or property (Board Review 08).

§ 87(2)(g)

Sgt. Pabon’s search of § 87(2)(b)

§ 87(2)(b) was not predicated on consent alone; however, Sgt. Pabon and Det. Reyna testified that Det. Ierna provided the address to Sgt. Pabon as a result of his investigation. § 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant David Pabon entered § 87(2)(b) in Yonkers, NY.

Allegation (E) Abuse of Authority: Sergeant David Pabon searched § 87(2)(b) in Yonkers, NY.

Allegation (F) Abuse of Authority: Sergeant David Pabon failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that she was in her home at § 87(2)(b) in Yonkers when she heard the doorbell ring (Board Review 01). § 87(2)(b) opened the door and saw multiple NYPD officers there. Sgt. Pabon introduced himself by name and asked if she knew an individual named “§ 87(2)(b)”. § 87(2)(b) told him that she did not know anyone by that name. Sgt. Pabon explained that they had an arrest warrant for § 87(2)(b) and showed her a photo of him. § 87(2)(b) said that she did not recognize the man in the photo. Sgt. Pabon asked § 87(2)(b) if the officers could come inside. § 87(2)(b) did not know whether or not to let the officers inside because she had never had an experience like this with the police. § 87(2)(b) tried to say no to the officers because she was alone and did not feel comfortable letting them inside. The officers told § 87(2)(b) that they wanted to make sure § 87(2)(b) was not inside. Sgt. Pabon told § 87(2)(b) that she could hold his identification (ID) card if she did not feel comfortable. § 87(2)(b) did not know why that would make her feel more comfortable. § 87(2)(b) agreed to let the officers inside because she wanted the encounter to end quickly. Sgt. Pabon and the officers came inside the house and walked through all of the rooms including the bathroom, kitchen, and office in the back. After approximately ten minutes, the officers left. The officers did not give § 87(2)(b) a copy of the warrant or any kind of paperwork. She only learned Sgt. Pabon’s name when he introduced himself.

Sgt. Pabon testified that he and his team went to § 87(2)(b) based on § 87(2)(b) statement that § 87(2)(b) might be § 87(2)(b) son (Board Review 02). This was not an address provided in the case file, and Sgt. Pabon did not take any investigative steps to verify that this address was associated with § 87(2)(b). When the officers arrived, § 87(2)(b) answered the door and stated that she did not know § 87(2)(b). Sgt. Pabon asked, “May I come inside to ensure the subject isn’t home?” § 87(2)(b) responded, “Sure, you can come in.” Sgt. Pabon did not document her consent or tell her that she had the right to refuse. Sgt. Pabon and the officers entered and walked through the house. They did not find anyone else inside. After a few minutes, the officers left. At some point, Sgt. Pabon offered a business card to § 87(2)(b) but she refused it.

Det. Reyna also testified that § 87(2)(b) gave consent for the officers to enter her home (Board Review 03). Det. Reyna did not recall § 87(2)(b) hesitating or stating that she did not want the officers to go inside. Det. Reyna did not recall if any officer told § 87(2)(b) she could refuse consent. None of the officers offered § 87(2)(b) a business card.

The video from § 87(2)(b) security camera showed this interaction beginning at the 1:54 minute-mark of the player's timestamp (Board Review 09). Sgt. Pabon and Det. Reyna introduced themselves and showed § 87(2)(b) the arrest warrant for § 87(2)(b). § 87(2)(b) told them she did not recognize him by name or photo. At 3:50, Sgt. Pabon said, "Do you mind if we just look around the home, make sure he's not here?" § 87(2)(b) replied, "In here? ... I'm by myself though." Sgt. Pabon and Det. Reyna offered for § 87(2)(b) to hold their identification (ID) cards. At 4:25, § 87(2)(b) said something partially unintelligible, "I don't want [unknown]," before saying, "You can come in." The officers entered the home. At no point did Sgt. Pabon tell § 87(2)(b) she had the right to refuse consent. At 8:18, the officers exited the house. It was not captured whether Sgt. Pabon offered § 87(2)(b) a business card.

As noted above, New York Criminal Procedure Law §120.80 states that in order to arrest the subject of an arrest warrant inside a third-party residence, an officer must obtain a search warrant authorizing such entry into the premises (Board Review 05).

People v. Gonzalez, 39 N.Y.2d 122, found that officers may enter and search a premises if voluntary and unconstrained consent has been given for the officers to enter and search (Board Review 06). The court posited that, when determining the voluntariness of consent, one should consider whether the officers informed the individual of their right to refuse consent.

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According to New York City Administrative Code §14-174, officers are required to offer a business card to the person who is the subject of a search of person or property (Board Review 08).

The evidence showed that Sgt. Pabon did not inform § 87(2)(b) that she could refuse consent for the officers to search the premises. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Although Sgt. Pabon asserted that he offered § 87(2)(b) a business card, Det. Reyna stated that no officer offered § 87(2)(b) a card. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
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- Sgt. Pabon has been a member of service for 17 years and has been a subject in three additional CCRB complaints and eight allegations, none of which were substantiated (Board Review 13).

Mediation, Civil, and Criminal Histories

- On June 1, 2022, this case was sent to mediation, and on June 2, 2022, the case was returned to investigation as § 87(2)(b) decided she wanted an investigation instead.
- As of January 26, 2023, a request for all notices of claim filed in regard to this incident was sent to the New York City Office of the Comptroller and will be added to the case file upon receipt (Board Review 14).
- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 4

Investigator:


Signature

Inv. Devaney

Print Title & Name

02/09/2023

Date _____

Squad Leader:

Raquel Velasquez

Signature

IM Raquel Velasquez

Print Title & Name

02/09/2023

Date _____

Reviewer:

Signature

Print Title & Name

Date _____